

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JUAN DAVILA-BAJANA,	)	
	)	
Plaintiff,	)	Civil Action No. 04-253E
	)	
v.	)	Hon. Sean J. McLaughlin
	)	U.S. District Judge
TIM HOLOHAN, <u>et al.</u> ,	)	
	)	Hon. Susan Paradise Baxter
Defendants.	)	Chief U.S. Magistrate Judge
	)	
	)	ELECTRONICALLY FILED
	)	

**DEFENDANTS' MOTION FOR STAY PENDING  
PLAINTIFF'S INTERLOCUTORY APPEAL**

AND NOW, come the Defendants, Tim Holohan, et al., by and through their attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania; Paul Kovac, Assistant United States Attorney for said district; and Douglas S. Goldring, Assistant General Counsel for Federal Prison Industries, Inc., and respectfully request that the discovery schedule in this case be stayed pending final disposition of Plaintiff's Interlocutory Appeal to the Third Circuit. In support of this Motion, Defendants aver as follows:

1. Plaintiff's Complaint was received by the Court in this case on or around September 8, 2004, and was filed on or around January 12, 2005. See Docket Nos. 1, 6. On or around November 14, 2005, Defendants submitted a Motion to Dismiss and Memorandum of Law in Support. On May 9, 2006, the Court issued a Report and Recommendation granting in part and denying in part Defendants' Motion to Dismiss.

2. After Objections were filed, the Court issued an Amended Report and Recommendation ("Amended R & R") on July 18, 2006. The Amended R & R granted Defendants' Motion to Dismiss with regard to Plaintiff's Federal Tort Claims Act and Eighth Amendment allegations. The Court denied that portion of the Motion to Dismiss seeking dismissal of the retaliation claim. On August 21, 2006, Judge McLaughlin adopted the Amended R & R.

3. On August 23, 2006, this Court issued a Case Management Order setting a discovery schedule on the sole remaining retaliation allegation. Discovery in this case is currently scheduled for completion by November 21, 2006.

4. On September 11, 2006, Plaintiff filed an Interlocutory Appeal with the United States Court of Appeals for the Third Circuit concerning the Eighth Amendment claim that was dismissed.

5. Although interlocutory appeals such as this, prior to the entry of final judgment, stand little chance of success on appeal, Defendants still contend that in the interest of judicial economy, the discovery schedule in this case should be stayed. Defendants' discovery in this case will largely consist of taking Plaintiff's deposition and submitting various interrogatories to explore the basis of Plaintiff's retaliation claim. Should the Appeals Court consider Plaintiff's appeal and reverse this Court's decision, Defendants would be forced to take additional discovery on the Eighth Amendment issue and reopen Plaintiff's

deposition. Accordingly, in the interests of judicial economy, Defendants respectfully request that the current discovery schedule be stayed. Defendants will notify the Court as soon as the Appeals Court has disposed of Plaintiff's appeal.

A proposed Order is attached.

Respectfully submitted,

MARY BETH BUCHANAN  
United States Attorney

By: s/Paul D. Kovac  
PAUL D. KOVAC  
Assistant U.S. Attorney  
Western District of Pennsylvania  
U.S. Post Office & Courthouse  
700 Grant Street, Suite 4000  
Pittsburgh, PA 15219  
(412) 894-7489

OF COUNSEL:

DOUGLAS S. GOLDRING  
Assistant General Counsel  
Federal Prison Industries (UNICOR)  
400 First Street, NW, 8<sup>th</sup> Floor  
Washington, DC 20534

Dated: September 18, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of September, 2006, I electronically filed and mailed via first-class mail a true and correct copy of **DEFENDANTS' MOTION FOR STAY PENDING PLAINTIFF'S INTERLOCUTORY APPEAL** to the following:

Mr. Juan Davila-Bajana  
Plaintiff Pro Se  
Reg. No. 47580-053  
FCI-McKean  
P.O. Box 8000  
Bradford, PA 16701

s/Paul D. Kovac  
PAUL D. KOVAC  
Assistant U.S. Attorney